

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LORENZO CASTENEDA,  
Plaintiff,  
v.  
J. QUIRING, et al.,  
Defendants.

No. 2:21-cv-2196 DAD CSK P

ORDER AND  
FINDINGS & RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights complaint under 42 U.S.C. § 1983. Defendants' fully briefed motions for summary judgment and to strike plaintiff's sur-reply are before the Court. (ECF Nos. 66, 78.) As discussed below, the Court grants defendants' motion to strike, and recommends that the motion for summary judgment be granted in part and denied in part.

**I. BACKGROUND**

In his original complaint, plaintiff raised excessive force and retaliation claims against defendants Lt. J. Quiring, Sgt. K. McTaggart, Officer Rowe, and Officer Medina ("custody defendants"), all employed at Mule Creek State Prison ("MCSP"). (ECF No. 1.) On February 16, 2022, the Court ordered service on the custody defendants. (ECF No. 13.) On July 26, 2022, defendants J. Quiring, K. McTaggart, J. Rowe and S. Medina filed an answer. (ECF No. 24.)

On November 15, 2022, plaintiff filed a motion to amend to add as defendants K.

Chamberlin and M. Arteaga, who plaintiff identified through discovery and had named as Doe defendants in the original complaint. (ECF No. 35 at 3.) On December 30, 2022, the Court granted plaintiff leave to amend and screened the first amended complaint, finding that plaintiff's allegations as to defendants K. Chamberlin and M. Arteaga were vague and conclusory; the claims were dismissed, and plaintiff was again granted leave to amend. (*Id.* at 7-8, 9.) On January 30, 2023, plaintiff filed the second amended complaint. (ECF No. 36.) On February 1, 2023, the second amended complaint was screened, which was served on defendants K. Chamberlin and M. Arteaga, and on April 29, 2023, all six defendants filed an answer to the second amended complaint (ECF No. 49).

Plaintiff was first deposed on September 27, 2022. Pl.'s Dep. I. After plaintiff was allowed to amend again and filed the SAC, plaintiff was deposed a second time, on October 16, 2023. Pl.'s Dep. II.

On March 1, 2024, all defendants filed a motion for summary judgment. (ECF No. 66.) On March 29, 2024, plaintiff filed an opposition. (ECF No. 73.) On May 22, 2024, defendants filed a reply. (ECF No. 76.) On June 14, 2024, plaintiff filed a sur-reply without leave of court. (ECF No. 77.) On June 24, 2024, defendants filed a motion to strike the sur-reply. (ECF No. 78.) On July 3, 2024, plaintiff filed an opposition to defendants' motion to strike the sur-reply. (ECF No. 79.)

## **II. SECOND AMENDED COMPLAINT**

In his verified second amended complaint ("SAC"), plaintiff alleges that while he was under the EOP<sup>1</sup> level of mental health care at MCSP, the following took place:

On April 1, 2021, defendants Sgt. K. McTaggart and Lt. J. Quiring ordered defendant J. Rowe to cuff up plaintiff behind his back and put him in a small stand up cage with no seat and no room to move around. SAC at 5 (ECF No. 36). Defendant Rowe applied the handcuffs

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<sup>1</sup> The Mental Health Services Delivery System Program Guide for the California Department of Corrections and Rehabilitation provides four levels of mental health care services: Correctional Clinical Case Management System ("CCCMS"); Enhanced Outpatient ("EOP"); Mental Health Crisis Bed ("MHCB") and inpatient hospital care. *Coleman v. Brown*, 2013 WL 6491529, at \*1 (E.D. Cal. Dec. 10, 2013).

1 extremely tight. Id. “Plaintiff pleaded with defendant to please loose[n] the handcuffs[;]  
2 defendant Rowe stated stop complaining I am only following orders from my sergeant [and]  
3 lieutenant.” Id. Plaintiff remained in the holding cage for four hours with no restroom breaks or  
4 drinking water, with his hands tightly cuffed behind his back. Id.

5 On April 2, 2021, defendants Sgt. K. McTaggart and Lt. J. Quiring ordered defendant  
6 Officer Medina to cuff up plaintiff behind his back and put him in the stand up cage. Id. The  
7 handcuffs were again applied extremely tight. Id. Plaintiff pleaded with Medina to loosen the  
8 handcuffs, but “Medina stated don’t tell me[,], talk to the sergeant; this is above my pay rate.” Id.  
9 Plaintiff remained in the cage for the next four hours, hands cuffed behind his back, with no  
10 restroom breaks or drinking water. Id. at 6.

11 On both days, plaintiff pleaded with Sgt. McTaggart and Lt. Quiring, telling them the  
12 handcuffs were intentionally tightened by Officers Rowe and Medina and were causing plaintiff  
13 severe pain, that he had had back surgery and suffered chronic pain to his wrist, knees and back.  
14 Id. Plaintiff also told them that he needed to use the restroom and requested drinking water. Id.  
15 “Defendant K. McTaggart responded 602 us like you always do. Defendant J. Quiring stated you  
16 heard[,], 602 us.” Id. at 5-6. The defendants then laughed, mocked plaintiff, and ignored his pleas  
17 for help. Id. As a result of the custody defendants’ actions, plaintiff urinated on himself while  
18 handcuffed in the cage. Id. at 7.

19 Plaintiff sought medical care from defendants Chamberlin and Arteaga, both Licensed  
20 Vocational Nurses (“LVNs”), notifying them plaintiff was in pain, and requesting assistance for  
21 plaintiff’s pain and injuries. Id. at 6. Plaintiff requested that both defendants Chamberlin and  
22 Arteaga document plaintiff’s pain and injuries on a 7219 medical form, but they refused;  
23 defendant Arteaga told plaintiff “no, no, no, I am not going to report anything.” Id. Plaintiff’s  
24 injuries included bruises, swollen wrists, and pain to his back, shoulders, knees, neck and feet. Id.  
25 at 6-7.

26 Plaintiff argues that the custody defendants subjected plaintiff to excessive force and  
27 unreasonable use of mechanical restraints with the specific intent to punish and inflict pain on  
28 plaintiff. Id. at 8. He contends the restraints were used maliciously and sadistically for the very

1 purpose of causing plaintiff harm. Id. Plaintiff alleges that the custody defendants’ refusal to  
2 provide water or restroom access over the eight hours he was held in the holding cell (four hours  
3 on each day) demonstrate conditions violating plaintiff’s right to humane conditions of  
4 confinement. Id. at 9. Plaintiff alleges defendants McTaggart and Quiring were aware of the  
5 mistreatment by defendants Rowe and Medina yet failed to intervene and knowingly allowed it to  
6 continue. Id.

7       Liberally construed, plaintiff also alleges defendants Rowe, Medina, McTaggart and  
8 Quiring retaliated against plaintiff by handcuffing him and placing him in the holding cells  
9 because plaintiff filed 602 grievances. Id. at 8. On information and belief, plaintiff claims the  
10 custody defendants have a “significant history of misconduct” toward prisoners at MCSP,  
11 including excessive force, falsifying reports, and retaliation against prisoners who file 602  
12 grievances. Id.

13       Further, plaintiff contends defendants Chamberlin and Arteaga subjected plaintiff “to  
14 deliberate indifference to plaintiff[’s] need for medical care.” Id. at 7. On information and belief,  
15 plaintiff claims defendants Chamberlin and Arteaga have a significant history of falsifying  
16 medical records. Id. at 8. Plaintiff argues defendants Chamberlin and Arteaga had a duty to  
17 ensure plaintiff was provided adequate medical care and personal safety and their refusal violated  
18 his Eighth Amendment rights. Id. at 7.

19       In addition, plaintiff alleges that “[d]efendants[,] acting in concert with each other[,]  
20 reached an understanding to conspire by falsifying reports[,] holding cell logs dated April 1 and 2,  
21 2021, documenting regular checks by staff and restroom breaks and by refusing to document  
22 plaintiff’s injuries on an injury report form.” Id. at 7. Specifically, plaintiff alleges that  
23 defendants Rowe and Medina joined a conspiracy when they followed orders by McTaggart and  
24 Quiring to maliciously and sadistically apply handcuffs to plaintiff and by refusing to provide  
25 water and restroom breaks. Id. at 14. Plaintiff contends defendants McTaggart and Quiring  
26 joined the conspiracy when they ordered defendants Rowe and Medina to maliciously and  
27 sadistically restrain plaintiff and by refusing to provide water and restroom breaks. Id. at 15. In  
28 support, plaintiff claims the responses by defendants Rowe and Medina, “stop complaining I am

only following order from my sergeant and lieutenant,” and “don’t tell me talk to the sergeant this is above my pay rate,” are evidence of an agreement and meeting of the minds of the custody defendants to intentionally cause plaintiff harm. *Id.* Similarly, he argues the references to “602” to him by defendants McTaggart and Quiring, and all of the custody defendants laughing at him and mocking him while leaving him in the holding cell for four hours each day, handcuffed extremely tight behind his back, show their meeting of the minds to intentionally harm plaintiff. *Id.* at 16. Plaintiff contends their common objective was to harm plaintiff, and in furtherance of the conspiracy, plaintiff contends the custody defendants fabricated the holding cell logs to show plaintiff was provided restroom breaks. Finally, plaintiff contends that defendants Chamberlin and Arteaga joined the conspiracy when they refused to document plaintiff’s injuries, and argues that Arteaga’s response, “No, No, No, I am not going to report anything,” constitutes evidence of an agreement and meeting among the minds to conspire to abuse plaintiff. *Id.* at 16. Plaintiff argues that all the above actions were unlikely to have been undertaken without an agreement among the defendants. *Id.*

### III. LEGAL STANDARDS FOR SUMMARY JUDGMENT

Summary judgment is appropriate when it is demonstrated that the standard set forth in Federal Rule of Civil Procedure 56 is met. “The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

Under summary judgment practice, the moving party always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,” which it believes demonstrate the absence of a genuine issue of material fact.

Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting then-numbered Fed. R. Civ. P. 56(c).) “Where the nonmoving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party’s case.” Nursing Home Pension Fund, Local 144 v. Oracle Corp. (In re Oracle Corp. Sec. Litig.), 627 F.3d 376, 387 (9th Cir. 2010) (citing Celotex Corp., 477 U.S. at 325); see also Fed. R. Civ. P. 56 advisory

1 committee notes to 2010 amendments (recognizing that “a party who does not have the trial  
2 burden of production may rely on a showing that a party who does have the trial burden cannot  
3 produce admissible evidence to carry its burden as to the fact”). Indeed, summary judgment  
4 should be entered, after adequate time for discovery and upon motion, against a party who fails to  
5 make a showing sufficient to establish the existence of an element essential to that party’s case,  
6 and on which that party will bear the burden of proof at trial. Celotex Corp., 477 U.S. at 322.  
7 “[A] complete failure of proof concerning an essential element of the nonmoving party’s case  
8 necessarily renders all other facts immaterial.” Id. at 323.

9 Consequently, if the moving party meets its initial responsibility, the burden then shifts to  
10 the opposing party to establish that a genuine issue as to any material fact actually exists. See  
11 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to  
12 establish the existence of such a factual dispute, the opposing party may not rely upon the  
13 allegations or denials of its pleadings, but is required to tender evidence of specific facts in the  
14 form of affidavits, and/or admissible discovery material in support of its contention that such a  
15 dispute exists. See Fed. R. Civ. P. 56(c); Matsushita, 475 U.S. at 586 n.11. The opposing party  
16 must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome  
17 of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248  
18 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir.  
19 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return  
20 a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436  
21 (9th Cir. 1987), overruled on other grounds as stated in Flood v. Miller, 35 F. App’x 701, 703 n.3  
22 (9th Cir. 2002).

23 In the endeavor to establish the existence of a factual dispute, the opposing party need not  
24 establish a material issue of fact conclusively in its favor. It is sufficient that “the claimed factual  
25 dispute be shown to require a jury or judge to resolve the parties’ differing versions of the truth at  
26 trial.” T.W. Elec. Serv., 809 F.2d at 630. Thus, the “purpose of summary judgment is to ‘pierce  
27 the pleadings and to assess the proof in order to see whether there is a genuine need for trial.’”  
28 Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory committee’s notes to 1963

1 amendments).

2 In resolving a summary judgment motion, the court examines the pleadings, depositions,  
3 answers to interrogatories, and admissions on file, together with the affidavits, if any. Fed. R.  
4 Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson v. Liberty  
5 Lobby, 477 U.S. at 255. All reasonable inferences that may be drawn from the facts placed  
6 before the court must be drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587.  
7 Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to  
8 produce a factual predicate from which the inference may be drawn. See Richards v. Nielsen  
9 Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902 (9th Cir.  
10 1987). Finally, to demonstrate a genuine issue, the opposing party "must do more than simply  
11 show that there is some metaphysical doubt as to the material facts. . . . Where the record taken  
12 as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no  
13 'genuine issue for trial.'" Matsushita, 475 U.S. at 586 (citation omitted).

14 By notice filed on March 1, 2024, plaintiff was advised of the requirements for opposing a  
15 motion brought pursuant to Rule 56 of the Federal Rules of Civil Procedure. (ECF No. 66-3  
16 (citing Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc))).

#### 17 **IV. EIGHTH AMENDMENT EXCESSIVE FORCE CLAIMS**

18 Plaintiff contends that defendants Rowe and Medina applied handcuffs extremely tight,  
19 and defendants Quiring, McTaggart, Rowe and Medina refused to loosen them while plaintiff was  
20 held in a small holding cage for four hours each day. SAC at 3, 5-6.

##### 21 **A. Legal Standards**

22 "In its prohibition of 'cruel and unusual punishments,' the Eighth Amendment places  
23 restraints on prison officials, who may not . . . use excessive physical force against prisoners."  
24 Farmer v. Brennan, 511 U.S. 825, 832 (1994). "[W]henver prison officials stand accused of  
25 using excessive physical force in violation of the [Eighth Amendment], the core judicial inquiry is  
26 . . . whether force was applied in a good-faith effort to maintain or restore discipline, or  
27 maliciously and sadistically to cause harm." Hudson v. McMillian, 503 U.S. 1, 6-7 (1992).  
28 When determining whether the force was excessive, the court looks to the "extent of injury

suffered by an inmate . . . , the need for application of force, the relationship between that need and the amount of force used, the threat ‘reasonably perceived by the responsible officials,’ and ‘any efforts made to temper the severity of a forceful response.’” *Id.* at 7 (quoting *Whitley v. Albers*, 475 U.S. 312, 321 (1986)). While de minimis uses of physical force generally do not implicate the Eighth Amendment, significant injury need not be evident in the context of an excessive force claim, because “[w]hen prison officials maliciously and sadistically use force to cause harm, contemporary standards of decency always are violated.” *Id.* at 9.

## B. The Parties’ Positions

### 1. *Defendants’ Motion*

Defendants contend that the unresisted application of handcuffs, which are authorized restraint equipment, is not a use of force, nor was placing plaintiff in handcuffs for four hours an excessive use of force because such placement was needed to ensure plaintiff’s safety following submission of his health care services request form claiming his intent to end his life. Defs.’ Mem. at 8-9 (ECF No. 66-1); Defs.’ Ex. C (ECF No. 66-4 at 27). Plaintiff did not have a chrono, Developmental Disability Program (“DPP”) Disability Accommodation, or other accommodation under the *Armstrong* remedial plan, that prohibited or restricted plaintiff from being placed or kept in handcuffs, from standing for an extended period of time, or from being placed in a holding cell. Defs.’ Exs. G, H (ECF No. 66-4 at 84-87). Defendants argue that keeping plaintiff handcuffed during periods when he was not under direct supervision served a legitimate penological goal to ensure plaintiff committed no self-harm. Defs.’ Mem. at 14. Defendants point out that plaintiff was immediately released as soon as his mental health clinician evaluated plaintiff. While plaintiff may have suffered some discomfort, defendants contend such discomfort fails to rise to the level of cruel and unusual punishment. *Id.*

### 2. *Plaintiff’s Opposition*

Initially, plaintiff notes that defendants declined to settle this case for \$5,000. Pl.’s Opp’n at 1 (ECF No. 73). Plaintiff argues that defendants did not follow policy because the handcuffs were applied so tightly they caused plaintiff to suffer pain, bruises and swollen wrists, and that he was not placed in a holding cell designated for suicidal inmates or those on a hunger strike. *Id.* at

1 3. Rather, he was placed in a holding cell intended for inmates who have assaulted staff or other  
2 inmates or were resisting staff. Id. Plaintiff contends that he should have been escorted directly  
3 to the triage and treatment area (“TTA”) where he would receive direct observation and be  
4 provided a mattress and a place to sit down, without being handcuffed behind his back. Id. at 4,  
5 citing MCSP’s Operational Procedure Policy for Suicidal Prevention. Further, plaintiff argues  
6 that MCSP policy required that he be housed according to “MC 38, MHCB level of care and AH  
7 [Alternative Housing] placements.” Id. Plaintiff argues that nowhere in the policy does it  
8 provide that plaintiff had to be handcuffed for the four hours he was held in the holding cell each  
9 day. Id. at 4-5. Thus, plaintiff contends defendants failed to follow both suicide prevention and  
10 hunger strike policies. Plaintiff reiterates that custody defendants failed to loosen the handcuffs  
11 despite plaintiff’s complaints of pain. Id. at 8-9.

12 Further, plaintiff submits medical records he claims rebuts defendants’ contention that  
13 plaintiff had no accommodation order precluding his handcuffing or being placed in a holding  
14 cell, pointing to his left carpal tunnel syndrome which required he wear a permanent brace for  
15 wrist support, was provided a lower bottom bunk, knee brace, ankle, foot orthoses (June 24,  
16 2016), had back surgery in May 15, 2001, and suffered chronic pain to his lower back, left leg,  
17 toe, and MRI showed disc bulge on both right and left sides (June 5, 2001). Id. at 17-18 (citing  
18 Pl.’s Ex. O (ECF No. 73 at 83-90). As plaintiff set forth in his complaint, on both April 1 and 2,  
19 2021, plaintiff informed custody defendants that he suffered from chronic pain to his wrist, knees  
20 and back. Id. at 18.

### 21 3. Defendants’ Reply

22 Initially, defendants object that settlement negotiations and communications are  
23 confidential and plaintiff’s continued reference to them is inappropriate and improper, and  
24 nonetheless, plaintiff’s current reference is inaccurate. Defs.’ Reply at 2-3 (ECF No. 76).  
25 Defendants ask the Court to caution plaintiff about making any statements concerning  
26 confidential settlement discussions. Id. at 3.

27 As to plaintiff’s excessive force claims, defendants first argue that even assuming  
28 defendants failed to follow CDCR policies, which they do not concede, a failure to follow prison

1 policy does not establish § 1983 liability; rather, plaintiff must prove custody defendants violated  
2 plaintiff's constitutional rights. Defs.' Reply at 3 (citing Case v. Kitsap Cnty. Sheriff's Dep't,  
3 249 F.3d 921, 930 (9th Cir. 2001)).<sup>2</sup> Defendants also claim "[p]laintiff's allegations that  
4 defendants failed to follow MCSP policy is irrelevant to the determination of whether defendants  
5 violated his constitutional or federal civil rights." Id.

6 Second, defendants point out that the MCSP policy quoted by plaintiff "clearly states that  
7 direct escort to the TTA is only required if the inmate is actively self-injurious or otherwise not  
8 safe to await a mental health evaluation in the program office." Defs.' Reply at 4. Defendants  
9 agree with plaintiff that he was not resisting or engaging in self-injurious behavior, and therefore  
10 contend it was safe for plaintiff to be housed in the program office while he awaited his mental  
11 health evaluation, which aligned with MCSP policy. Id. Defendants argue that because plaintiff  
12 was never deemed unsafe for his housing assignment, and because he had not yet been evaluated  
13 by his mental health clinician, there was no need to implement the admission and treatment plans  
14 per MHCB and AH policies and procedure. Id. Rather, as the above cited policy instructs,  
15 "evaluations take place in the programming office unless it is unsafe to do so." Id.

16 Third, contrary to plaintiff's contention that nothing in the policy required that suicidal  
17 inmates be handcuffed while awaiting evaluation, defendants point to MCSP policy MC 011  
18 which states "[a]n inmate expressing suicidal thoughts or ideation shall remain in restraints  
19 (handcuffs)." Id. at 5 (citing Ex. 1 ("MC 011") at 2) (ECF No. 76-1)). Defendants argue that  
20 being handcuffed in a holding cell for four hours, or even longer, is not a constitutional violation.  
21 Id. (citing Defs.' Mem. at 16). Defendants note that plaintiff never alleged he was held in the  
22 holding cell for a continuous eight hour period, but rather was held in the holding cell for about  
23 four hours on each of the two days. Id.

24 Fourth, defendants contend that plaintiff improperly relies on policies regarding hunger  
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26 <sup>2</sup> In Case, the plaintiff conceded that the arrest was pursuant to a facially valid warrant, so the  
27 court evaluated whether defendant officers were entitled to qualified immunity. Case, 249 F.3d at  
28 926. Such evaluation turned "on whether a reasonable officer would have known that the  
deputies' conduct violated Case's federal statutory or constitutional rights rather than merely a  
state law or policy provision." Id. at 929.

1 strikes in general, not hunger strikes being used to end one's life, which implicate policies for  
 2 suicidal inmates. Id. Defendants highlight the differences in procedures regarding inmate  
 3 placement and care for inmates on hunger strikes versus those managing suicidal threats and  
 4 attempts; the former focuses on maintaining institutional safety and discipline during hunger  
 5 strikes, whereas the latter focuses on individual inmate safety. Id.

6 In conclusion, defendants contend that being handcuffed in a holding cell for four hours  
 7 on one day and four hours the next day is not a constitutional violation. Id. at 6. Defendants  
 8 assert that plaintiff was provided water and restroom breaks, but even if plaintiff's contrary  
 9 allegations are taken as true, a four hour deprivation is insufficient to demonstrate a constitutional  
 10 violation. Moreover, defendants fully complied with MCSP policies in response to plaintiff's  
 11 claim he wanted to end his life, which demonstrates a lack of deliberate indifference. But even if  
 12 plaintiff's contrary allegations were true, defendants contend that a violation of prison policy does  
 13 not amount to a federal or constitutional civil rights violation. Id.

#### 14 C. Discussion

##### 15 1. *Settlement Negotiations and Communications are Confidential*

16 The Court initially addresses defendants' request concerning settlement negotiations.  
 17 Defendants are correct that settlement negotiations and communications are confidential. See  
 18 Cook v. Yellow Freight Sys., Inc., 132 F.R.D. 548, 554 (E.D. Cal. 1990), overruled on other  
 19 grounds by Jaffee v. Redmond, 518 U.S. 1 (1996); see also Goodyear Tire & Rubber Co. v.  
 20 Chiles Power Supply, Inc., 332 F.3d 976, 980 (6th Cir. 2003) (explaining "there exists a strong  
 21 public interest in favor of secrecy of matters discussed by parties during settlement  
 22 negotiations"). Plaintiff is admonished to refrain from referring to settlement negotiations and  
 23 communications in any future court filing.

##### 24 2. *Prison Policies and Regulations are Relevant, But Not Dispositive*

25 As to the alleged Eighth Amendment excessive force claims, the Court agrees with  
 26 defendants that mere violations of prison policy or regulations, standing alone, do not rise to the  
 27 level of a constitutional violation. See Nurre v. Whitehead, 580 F.3d 1087, 1092 (9th Cir. 2009)  
 28 (section 1983 claims must be premised on violation of federal constitutional right); Sweaney v.

1 Ada Cnty., Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997) (section 1983 creates cause of action for  
 2 violation of federal law). But the Court disagrees that whether defendants violated prison policy  
 3 or regulations is not relevant. Because the evidence demonstrates plaintiff was escorted to the  
 4 holding cell because he expressed suicidal ideation, the policy governing such circumstances is  
 5 relevant here. Further, alleged violations of such policy could be relevant and may provide  
 6 support for a prisoner's claim that his constitutional rights were violated, if the prisoner adduces  
 7 evidence his federal rights were violated.

8 In this case, the Court does not find that defendants violated MCSP policy. As argued by  
 9 defendants, the general hunger strike policies are not relevant because plaintiff claimed he would  
 10 use a hunger strike to end his life. Defs.' Ex. C at 27. Because plaintiff's own written threat  
 11 implicated suicidal ideation, the Court finds that MCSP's policies governing suicidal inmates  
 12 governed the incidents at issue here, not the general hunger strike policies. In his opposition,  
 13 plaintiff set forth the suicidal policy at issue, which defendants do not dispute:

14 Custody staff shall place the inmate under direct observation, per  
 15 policy, via escort to the Yard Program Office. The inmate shall be  
 16 placed in a holding cell for safety. If the inmate is actively self-  
 17 injurious or not otherwise safe to await a MH evaluation in the  
 program office, custody staff shall escort the inmate directly to  
 Triage and Treatment Area" (TTA").

18 Pl.'s Opp'n at 3 (citing MCSP Operational Procedure, Suicide Prevention & Treatment of the  
 19 Suicidal Inmate/Patient, Managing Suicidal Threats) (ECF No. 73 at 34). It is undisputed that  
 20 plaintiff was not resistive or exhibiting self-injurious behavior (id. at 3), and therefore the cited  
 21 policy provided that plaintiff should be placed in the holding cell in the program office because it  
 22 was safe for plaintiff to be put there. The evidence demonstrates that custody defendants  
 23 followed MCSP policy for addressing suicidal inmates by placing plaintiff in the holding cell in  
 24 the program office for plaintiff's safety while he awaited mental health evaluation. As to  
 25 plaintiff's argument that he should have been admitted or placed in areas outlined in MC 38 under  
 26 the suicide prevention policy's terms, such admission and placement only applies to prisoners  
 27 who are determined to be unsafe for their assigned housing. Pl.'s Opp'n, Ex. A at 33. Here, once  
 28 plaintiff was evaluated by his mental health clinician, it is undisputed that he was quickly cleared

1 and immediately released for return to his housing unit on both occasions. Pl.'s Dep. I at 49:12-  
 2 15, 54:15-18, 63:4-11. Similarly, plaintiff's claim that he should have been held under constant  
 3 observation fails because he had not yet been evaluated by his mental health clinician and was  
 4 never put on suicide watch under the suicide policy (Pl.'s Opp'n, Ex. A at 36). Plaintiff adduced  
 5 no evidence showing it was unsafe for him to be held in the holding cell and admits he was not  
 6 resisting or engaging in self-injurious behavior during either incident.

7 In rebuttal to plaintiff's claim that MCSP policies do not require prisoners expressing  
 8 suicidal ideation to remain handcuffed (e.g., Pl.'s Opp'n at 4), defendants filed MCSP policy MC  
 9 011 that provides that if an inmate expresses suicidal ideation, the inmate "shall remain" in  
 10 handcuffs. Defs.' Reply, Ex. 1 (ECF No. 76-1 at 5). Based on this policy, and under these  
 11 circumstances, the Court agrees with defendants that restraining plaintiff in handcuffs while he  
 12 was in the holding cell complied with MCSP policy. Id.

### 13 *3. Evaluation of Plaintiff's Excessive Force Claims Under the Eighth Amendment*

14 Because the defendants' adherence to prison policy is not dispositive of plaintiff's Eighth  
 15 Amendment excessive force claims, the Court now turns to evaluate whether the handcuffing by  
 16 custody defendants and their alleged refusal to loosen the cuffs constituted excessive force under  
 17 federal law. "Not every malevolent touch by a prison guard gives rise to a federal cause of  
 18 action." Wilkins v. Gaddy, 559 U.S. 34, 37 (2010) (quoting Hudson, 503 U.S. at 9) (internal  
 19 quotation marks omitted). In applying the Hudson factors set forth above, the relevant inquiry is  
 20 "whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously  
 21 and sadistically to cause harm." Hughes v. Rodriguez, 31 F.4th 1211, 1221 (9th Cir. 2022)  
 22 (internal citation omitted). While the absence of a serious injury is relevant to the Eighth  
 23 Amendment inquiry, it does not end it. Hudson, 503 U.S. at 7. The malicious and sadistic use of  
 24 force to cause harm always violates contemporary standards of decency. Wilkins, 559 U.S. at 37  
 25 (quoting Hudson, 503 U.S. at 9) (quotation marks omitted). Thus, it is the use of force rather than  
 26 the resulting injury which ultimately counts. Wilkins, 559 U.S. at 38.

27 In cases where tight handcuffs were found to constitute unreasonable force, "factors in  
 28 addition to the tight handcuffing were shown including other forms of abusive conduct with the

1 handcuffing (such as physical violence), and/or plaintiff's visible pain or complaints of pain,  
2 advice to the defendant of pre-existing injuries, and/or request(s) that the defendant remove or  
3 loosen the handcuffs." Loftis v. Arisco, 2023 WL 5427943, at \*2 (E.D. Cal. Aug. 23, 2023)  
4 (quoting Taylor v. Cesarez, 2018 WL 6136154, at \*6 (C.D. Cal. June 27, 2018)); see also Leon v.  
5 Celaya, 2022 WL 1308123, at \*9 (S.D. Cal. May 2, 2022), report and recommendation adopted,  
6 2022 WL 3700560 (S.D. Cal. Aug. 8, 2022) ("In general, in cases where tight handcuffing was  
7 found to constitute excessive force, the plaintiff was in visible pain, repeatedly asked the  
8 defendant to remove or loosen the handcuffs, had pre-existing injuries known to the defendant, or  
9 alleged other forms of abusive conduct by the defendant.").

10 Here, the evidence establishes that the use of handcuffs was required to protect plaintiff  
11 from self-harm in light of his own written report that he intended to end his life. It is undisputed  
12 that at the time the handcuffs were applied, plaintiff was not resisting. Thus, his placement in the  
13 holding cells and the application of handcuffs was appropriate and does not constitute an  
14 excessive use of force for the malicious and sadistic purpose of causing harm. However, the issue  
15 of overly tight handcuffs remains.

16 Defendants provided evidence that under these circumstances the application of handcuffs  
17 was not a "use of force" according to prison policy. Defs.' Mem. at 15, Ex. F at 81. But  
18 defendants provided no legal authority showing that once defendants are authorized under prison  
19 policy to apply handcuffs, federal laws require no further legal evaluation (id. at 14), particularly  
20 where the prisoner claims the handcuffs were intentionally applied "extremely tight," defendants  
21 ignored plaintiff's requests to loosen them, he advised them of pre-existing injuries, and he was  
22 held that way for four hours both days. Since plaintiff was already restrained in a holding cell, an  
23 inference can be raised that applying and retaining overly tight handcuffs was for the purpose of  
24 causing pain, not simply to protect plaintiff from self-harm.

25 Defendants argue that even if they put the handcuffs on plaintiff in a manner that caused  
26 plaintiff "discomfort," that does not constitute cruel and unusual punishment. Id. at 14:15-17.  
27 But again, defendants failed to address plaintiff's claim that the handcuffs were "extremely tight"  
28 and caused him extreme pain, and that his requests for the handcuffs to be loosened were ignored.

1 The custody defendants provided no declarations as to their version of the April 2021 incidents.  
 2 “Although the level at which tight handcuffing becomes unconstitutional is not well defined, the  
 3 Ninth Circuit has found a triable issue when the handcuffs caused demonstrable injury or  
 4 unnecessary pain, or when officers ignored or refused requests to loosen the handcuffs once  
 5 alerted that the handcuffs were too tight.” Brooks v. Ruiz, 2024 WL 2702916, \*4 (C.D. Cal. Apr.  
 6 22, 2024) (holding plaintiff stated excessive force claim where plaintiff alleged he was tightly  
 7 restrained for two hours causing numbness, discomfort, and prolonged pain and where  
 8 “[defendant’s] conduct in ignoring [p]laintiff’s request to loosen the restraints . . . [did] not appear  
 9 to be a good-faith effort to maintain or restore discipline but rather raise[d] an inference of  
 10 malicious intent to cause [p]laintiff harm”); Palmer v. Sanderson, 9 F.3d 1433, 1436 (9th Cir.  
 11 1993) (in the context of an arrest, finding excessive force when officer refused to loosen tight  
 12 handcuffs, which resulted in pain and bruises to plaintiff’s wrists that lasted several weeks.); cf.  
 13 Munywe v. Dier, 2022 WL 2161116, at \*8 (W.D. Wash. Feb. 7, 2022),<sup>3</sup> report and  
 14 recommendation adopted, 2022 WL 2157044 (W.D. Wash. June 15, 2022), aff’d, 2023 WL  
 15 3918254 (9th Cir. June 9, 2023).

16 Defendants did cite authority for the proposition that “[d]e minimis injury suggests a de  
 17 minimis use of force.” Defs.’ Mem. at 14 (citing White by White v. Pierce Cnty., 797 F.2d 812,  
 18 816 (9th Cir. 1986) (additional citations omitted)). But the Supreme Court has rejected  
 19 defendants’ argument that a lack of significant injury confirms that the force used was not  
 20 excessive. Wilkins, 559 U.S. at 37-38 (“Injury and force, however, are only imperfectly  
 21 correlated, and it is the latter that ultimately counts.”).

22 In light of defendants’ failure to directly address plaintiff’s overly tight handcuffing claim,

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23  
 24 <sup>3</sup> In Munywe, the district court addressed a pretrial detainee’s conditions of confinement claim  
 25 under the Due Process Clause, and evidence included a video interview of Munywe’s injuries  
 26 following his release from the holding cell, in which Munywe claimed his “wrists were  
 27 uncomfortable.” 2022 WL 2161116 at 6-7. The district court found there was no objective  
 28 evidence in the record that Munywe sustained cuts, bruises, or any other injury from the allegedly  
 tight handcuffing. Id. at 6-8. “Even if the Court were to accept plaintiff’s bare assertions that he  
 was handcuffed behind his back in a holding cell for seven hours and denied water and bathroom  
 use, these facts do not, absent more, support a reasonable finding that defendants expressly  
 intended to punish plaintiff by exposing him to these conditions.” Id. at 8.)

1 the Court finds that defendants failed to meet their burden on summary judgment, and the custody  
2 defendants' motion on plaintiff's excessive force claim should be denied.

3 The Court also finds that there are genuine disputes of material fact that preclude granting  
4 summary judgment as to plaintiff's claims that defendants Rowe and Medina applied the  
5 handcuffs extremely tight at the orders of defendants McTaggart and Quiring, and that all the  
6 custody defendants refused to loosen the handcuffs when plaintiff requested they do so on  
7 multiple occasions during both days he was held in the holding cell.

8 Defendants adduced evidence that plaintiff did not have an accommodation chrono  
9 showing he could not be handcuffed behind his back, or had to be handcuffed in the front, could  
10 not stand for an extended period, or could not otherwise be held in a holding cell. Defs.' Mem. at  
11 14, Ex. G at 84. Further, defendants argue that custody officers are not medical professionals and  
12 are not responsible to interpret or reclassify accommodation chronos. Defs.' Reply. at 9.  
13 Defendants also provided holding cell logs that show plaintiff was checked on at regular intervals.  
14 Defs.' Mem., Ex. E at 76-78. The April 1, 2021 log reflects plaintiff was documented as "quiet"  
15 on 8 different occasions. Id., Ex. E at 76. But none of the logs reflect plaintiff was asking to  
16 have the handcuffs loosened. Defs.' Mem., Ex. E at 76-78. Defendants provided no declarations  
17 from any custody defendant concerning the events of April 1 and 2, 2021.

18 On the other hand, plaintiff claims that he told both defendants McTaggart and Quiring  
19 that the handcuffs were applied extremely tight causing severe pain and that he had back surgery  
20 and suffered from chronic pain to his wrist, knees and back. SAC at 5. Plaintiff points to his  
21 accommodation chrono for a wrist support brace, housing restrictions for a lower bunk, and  
22 provided medical records documenting his back surgery, carpal tunnel syndrome, and other  
23 ailments. Defs.' Mem. at 14, Ex. G at 84; Pl.'s Opp'n, Ex. O at 82-90. In response to plaintiff's  
24 complaints, plaintiff claims that defendants laughed and mocked plaintiff and defendants  
25 McTaggart and Quiring told plaintiff to file an appeal like plaintiff always does. SAC at 5-6. In  
26 addition, plaintiff testified that in response to his pleas for help, the custody defendants ignored  
27 his pleas and remained in the office "just laughing," while plaintiff was yelling, and claims the  
28 proximity of the office to the holding cell was such that the custody defendants could hear

1 plaintiff yelling. Pl.’s Dep. 62:2-13. Despite his pleas for help, plaintiff contends defendants  
2 McTaggart and Quiring failed to intervene and loosen the handcuffs. SAC at 11-12. As a result,  
3 plaintiff suffered “bruises, swollen wrists, and pain to his back, shoulders, knees, neck and feet.”  
4 SAC at 6-7.

5 This Court finds that there are genuine disputes of material fact as to whether custody  
6 defendants overly tightened plaintiff’s handcuffs such that he sustained bruises and swollen  
7 wrists, causing him extreme pain, raising an inference that the handcuffs were not applied in a  
8 good faith effort to protect plaintiff from self-harm. Accordingly, this Court finds that whether  
9 defendants used excessive force in applying the handcuffs and in ignoring plaintiff’s pleas to  
10 loosen the handcuffs for a four hour period each day constitutes a disputed material fact. Thus,  
11 the custody defendants are not entitled to summary judgment on the Eighth Amendment  
12 excessive force claim for overly tight handcuffing.

### 13 **V. EIGHTH AMENDMENT CONDITIONS OF CONFINEMENT**

14 Plaintiff contends that being housed in a small cage for four hours on two separate days  
15 without water or bathroom breaks, causing him to urinate on himself, constitutes a violation of his  
16 Eighth Amendment right to humane conditions of confinement.<sup>4</sup> SAC at 13.

#### 17 **A. Legal Standards**

18 In order for a prison official to be held liable for alleged unconstitutional conditions of  
19 confinement, the prisoner must allege facts that satisfy a two-prong test. Peralta v. Dillard, 744  
20 F.3d 1076, 1082 (9th Cir. 2014) (en banc) (citing Farmer, 511 U.S. at 837). The first prong is an  
21 objective prong, which requires that the deprivation be “sufficiently serious.” Lemire v. Cal.  
22 Dep’t of Corr. & Rehab., 726 F.3d 1062, 1074 (9th Cir. 2013) (citing Farmer, 511 U.S. at 834).  
23 In order to be sufficiently serious, the prison official’s “act or omission must result in the denial  
24 of the ‘minimal civilized measure of life’s necessities.” Lemire, 726 F.3d at 1074. The objective  
25 prong is not satisfied in cases where prison officials provide prisoners with “adequate shelter,  
26

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27 <sup>4</sup> Although plaintiff’s SAC claims he was held in the stand up cage for eight hours (id.), it is  
28 undisputed that plaintiff was held in the holding cell for no more than four hours on each day.  
Pl.’s Dep. I at 48:14-16.

1 food, clothing, sanitation, medical care, and personal safety.” Johnson v. Lewis, 217 F.3d 726,  
2 731 (9th Cir. 2000) (quoting Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982)). “[R]outine  
3 discomfort inherent in the prison setting” does not rise to the level of a constitutional violation.  
4 Johnson v. Lewis, 217 F.3d at 732 (“[m]ore modest deprivations can also form the objective basis  
5 of a violation, but only if such deprivations are lengthy or ongoing”). Rather, extreme  
6 deprivations are required to make out a conditions of confinement claim, and only those  
7 deprivations denying the minimal civilized measure of life’s necessities are sufficiently grave to  
8 form the basis of an Eighth Amendment violation. Farmer, 511 U.S. at 834; Hudson, 503 U.S. at  
9 9. The circumstances, nature, and duration of the deprivations are critical in determining whether  
10 the conditions complained of are grave enough to form the basis of a viable Eighth Amendment  
11 claim. Johnson v. Lewis, 217 F.3d at 731.

12 The second prong focuses on the subjective intent of the prison official. Peralta, 744 F.3d  
13 at 1082 (citing Farmer, 511 U.S. at 837). The deliberate indifference standard requires a showing  
14 that the prison official acted or failed to act despite the prison official’s knowledge of a  
15 substantial risk of serious harm to the prisoner. Id. (citing Farmer, 511 U.S. at 842). Mere  
16 negligence on the part of the prison official is not sufficient to establish liability. Farmer, 511  
17 U.S. at 835.

#### 18 B. Discussion

19 Defendants provided holding cell logs that show plaintiff was offered water and given  
20 restroom breaks on both days he was held in the holding cells. Defs.’ Ex. E (ECF No. 66-4 at 76-  
21 78). Further, the logs show that on April 1, 2021, plaintiff was in the holding cell three and a half  
22 hours, and on April 2, 2021, he was in the holding cell for three hours. Id. Plaintiff denies he  
23 was provided water or restroom breaks during either four hour period he was held in the holding  
24 cells, and was forced to urinate on himself, and contends that the defendants fabricated the  
25 holding cell logs. Pl.’s Dep. I at 53:5-16. Such disputes of fact, however, are not material under  
26 these circumstances. It is undisputed that plaintiff was placed in the holding cell because he  
27 expressed an intent to die, and such suicidal ideation supported custody defendants putting  
28 plaintiff in the holding cell in handcuffs while he awaited a mental health evaluation on both

1 days. Indeed, plaintiff's placement in the holding cell was to ensure plaintiff was not at risk of  
2 self-harm; thus, defendants did not deliberately ignore a substantial risk of harm by placing him  
3 there. The Ninth Circuit has found that prison officials must have the means to protect and  
4 control suicidal and mentally ill inmates, and therefore the temporary placement of prisoners in  
5 "safety cells," described by one expert witness as "small, dark, and scary," does not violate the  
6 Eighth Amendment. See Anderson v. Cnty. of Kern, 45 F.3d 1310, 1313-15 (9th Cir. 1995).  
7 Thus, under the circumstances, the Court finds that custody defendants were not deliberately  
8 indifferent to a substantial risk of harm by placing plaintiff in the holding cell, even for a four  
9 hour period of time each day.

10 In addition, as argued by defendants, short term deprivations of water and sanitation that  
11 do not pose a substantial risk of serious harm to the prisoner "do not give rise to deprivations that  
12 are sufficiently serious to support an Eighth Amendment claim." Gunn v. Tilton, 2011 WL  
13 1121949, at \*3 (E.D. Cal. Mar. 23, 2011) (collecting cases). In Gunn, the district court found that  
14 where the prisoner was not given water for about six hours, or restroom access for three to four  
15 hours, such short term deprivations were temporary and posed no threat of serious physical harm  
16 or illness and thus did not violate the Eighth Amendment. Id. at 4; see also Minifield v.  
17 Butikofer, 298 F. Supp. 2d 900, 904 (N.D. Cal. 2004) (five hour deprivation of water and  
18 ventilation during cell extraction in prisoner's unit did not violate prisoner's Eighth Amendment  
19 rights). Similarly, plaintiff was not faced with a threat of serious physical harm or illness by  
20 being placed in a holding cell for four hours, even without any water or restroom breaks.

21 To the extent plaintiff contends that being handcuffed for four hours was a violation of  
22 humane conditions of confinement, such argument also fails. See Pope v. Blausen, 2016 WL  
23 6094508, at \*5 (E.D. Cal. Oct. 19, 2016) ("being handcuffed for four hours and unable to access  
24 the restroom during that period does not give rise to a deprivation sufficiently serious to support  
25 an Eighth Amendment claim"). That plaintiff was forced to urinate on himself in the absence of  
26 restroom access does not alter the analysis because the deprivation was temporary and posed no  
27 threat of serious physical harm. See, e.g., Pac. Marine Ctr., Inc. v. Silva, 809 F. Supp. 2d 1266,  
28 1287 (E.D. Cal. 2011), aff'd, 553 F. App'x 671 (9th Cir. 2014) (during premises search, pretrial

1 detainee detained for four hour period, denied request to use the bathroom and “ultimately  
 2 urinated on herself,” court found the duration of the detention was not prolonged, and officer’s  
 3 refusal of her request to use restroom was not a constitutional violation); Curiel v. Stigler, 2008  
 4 WL 904894, at \*5 (N.D. Ill. Mar. 31, 2008) (during prison cellhouse “shakedown,” prisoner  
 5 handcuffed for “at most ten hours” without water and urinated on himself while handcuffed  
 6 outside, while “regrettable,” found “wet pants for a couple of hours cannot be said to be an  
 7 objective violation of the Eighth Amendment.”).

8 The Court acknowledges that the proper disposal of urine is a basic human need. But  
 9 taking as true plaintiff’s claims about the events of April 1 and 2, 2021, the nature, circumstances  
 10 and duration of the alleged deprivations fail to demonstrate that the conditions of plaintiff’s  
 11 confinement in the holding cell were sufficiently serious or grave enough to rise to the level of an  
 12 Eighth Amendment violation. The custody defendants are entitled to summary judgment on  
 13 plaintiff’s Eighth Amendment conditions of confinement claims.

## 14 **VI. FIRST AMENDMENT RETALIATION CLAIMS**

15 Plaintiff claims his prior grievances were the substantial or motivating factor behind the  
 16 custody defendants’ conduct, and in support of his retaliation claim, cites defendants’ statements  
 17 “602 to us like you always do,” and “You heard 602 us,” and claims the custody defendants  
 18 laughed and mocked plaintiff while he was asking them to loosen the handcuffs. Pl.’s Opp’n. at  
 19 20.

### 20 **A. Legal Standards**

21 “Prisoners have a First Amendment right to file grievances against prison officials and to  
 22 be free from retaliation for doing so.” Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012)  
 23 (citing Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)). To prevail on a retaliation claim  
 24 in the prison context, the prisoner must adduce evidence meeting five elements: “(1) An assertion  
 25 that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s  
 26 protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment  
 27 rights, and (5) the action did not reasonably advance a legitimate correctional goal.” Rhodes v.  
 28 Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

1 B. Discussion

2 Initially, the Court agrees with defendants that plaintiff's SAC fails to plausibly allege that  
3 any named defendant took some adverse action against plaintiff because of his protected conduct,  
4 that such adverse action chilled the exercise of plaintiff's First Amendment rights and failed to  
5 advance a legitimate correctional goal. See SAC, passim. Indeed, plaintiff did not include a  
6 separate retaliation cause of action. Id. Rather, as pointed out by defendants, plaintiff wrote,

7 On information and belief [custody defendants] at all times relevant  
8 while employed by the CDCR ha[ve] a significant history of  
9 misconduct towards the inmate population that includes excessive  
force, falsifying reports . . . and retaliation against inmates who[]  
filed 602 grievances against.

10 SAC at 8. Importantly, plaintiff failed to mention that it was his own handwritten threat to end  
11 his life that prompted his escort to the holding cell in the first place. Id., passim. Even assuming  
12 that any defendant had a significant history of misconduct, which plaintiff did not demonstrate,  
13 and this Court does not presume,<sup>5</sup> such alleged misconduct is not relevant to the instant claims  
14 and is inadmissible character evidence. See Fed. R. Evid. 404. It is also significant that in his  
15 deposition, plaintiff testified that he had not filed any grievance against any of the four custody  
16 defendants. Pl.'s Dep. I at 69:11-13.

17 In his opposition, plaintiff cited three documents in support of his retaliation claims, but  
18 none of these documents show a retaliatory motive by any defendant on April 1 or April 2, 2021.  
19 First, plaintiff relies on grievance 55838, dated November 5, 2020, in which plaintiff alleged that  
20 defendant McTaggart investigated and approved an allegedly false rules violation report written  
21 by another officer, claiming a violation of his due process rights by McTaggart and other officers.

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22 <sup>5</sup> Plaintiff cites two examples to support his claim of "significant history of misconduct:" (1) a  
23 lawsuit brought by a different inmate against multiple defendants, including J. Quiring, K.  
24 McTaggart and S. Medina, in Alley v. Saelee, No. 2:22-cv-0661 DAD CSK (E.D. Cal.). (Pl.'s  
25 Opp'n at 103-22); and (2) a privilege log detailing a notice of adverse action against defendant  
26 Medina. (Id. at 99-101). Contrary to plaintiff's claim that the adverse action was imposed due to  
27 Medina's failure to report excessive force, the Court previously found that "the adverse action  
28 was based on Medina filing a tardy report concerning Medina witnessing two inmates fighting,"  
and was not relevant to this action. Aug. 10, 2023 Order (ECF No. 51 at 7). As pointed out by  
defendants, nowhere in the privilege log or in the adverse action itself is the term "excessive  
force" used. Pl.'s Opp'n at 100-01. In any event, these examples do not constitute a "significant  
history of misconduct" by any defendant, including defendant Medina.

1 Pl.'s Opp'n, Ex. P at 92. The grievance was disapproved. Id. at 93. Second, plaintiff cites  
2 grievance 47214, dated October 7, 2020, in which plaintiff claimed Officer Marquina issued a  
3 rules violation report falsely claiming plaintiff possessed alcohol. Id. at 97. In this grievance,  
4 plaintiff refers to a three page statement, which plaintiff did not provide, and which plaintiff now  
5 claims was a three page statement addressed to defendant J. Quiring. Pl.'s Opp'n. at 18. Third,  
6 plaintiff refers to a March 1, 2021 letter to plaintiff from the Inspector General, which was  
7 responding to plaintiff's letter to the Inspector General where he allegedly reported staff for  
8 inciting violence against plaintiff by other inmates. Id., citing Ex. P at 98. Plaintiff also did not  
9 provide his letter to the Inspector General.

10 A retaliatory motive may be shown by the timing of the allegedly retaliatory act or other  
11 circumstantial evidence, as well as direct evidence. Bruce v. Ylst, 351 F.3d 1283, 1288-89 (9th  
12 Cir. 2003). Circumstantial evidence may be shown by proximity in time between the protected  
13 conduct and the alleged retaliation; expressed opposition to the plaintiff's conduct; or other  
14 evidence that shows the defendant's reasons offered "for the adverse . . . action were false and  
15 pretextual." McCollum v. Ca. Dep't of Corr. And Rehab., 647 F.3d 870, 882 (9th Cir. 2011)  
16 (internal quotation marks and citation omitted). Mere speculation that a defendant acted out of  
17 retaliation is not sufficient. Wood v. Yordy, 753 F.3d 899, 904 (9th Cir. 2014) (affirming grant of  
18 summary judgment because no evidence defendants knew about prisoner's prior lawsuit or that  
19 defendants' alleged statements were made in reference to prior lawsuit).

20 The two grievances relied upon by plaintiff from October 2020 and November 2020 do not  
21 bear any proximity in time to the April 1 and 2, 2021 incidents. Further, the Court is not required  
22 to review evidence not provided by the litigant. But even so, as noted by defendants, the  
23 purported statement sent to a supervising officer is not the same as filing a grievance against the  
24 officer; because it was not a grievance against defendant Quiring, the Court would not consider it  
25 protected conduct. Finally, plaintiff provided no nexus between such written statement or his  
26 missing letter to the Inspector General in which he allegedly reported "staff" for inciting violent  
27 against plaintiff to the custody defendants or the incidents at issue here. For all these reasons, the  
28 Court is not persuaded that any of these three documents demonstrate a retaliatory motive on the

1 part of any of the custody defendants.

2 Plaintiff relies in large part on the two statements he declares were made by defendants  
3 McTaggart and Quiring: “602 us like you always do, and “602 us,” respectively, and claims that  
4 while he pled for help, the custody defendants “laughed at him and mocked him” while he was in  
5 the holding cell both days. SAC at 5-6, 15-16. In his deposition, plaintiff testified the custody  
6 defendants were in the adjacent office, “just laughing” while plaintiff was “yelling,” but denied  
7 any of the custody defendants taunted plaintiff while he was in the holding cell. Pl.’s Dep. I 62:9-  
8 16. Id. However, in light of the legitimate penological reason to protect plaintiff from harming  
9 himself after he threatened to end his life, plaintiff was initially handcuffed and placed in the  
10 holding cell pending evaluation by his mental health clinician, the Court finds it implausible that  
11 retaliation was the substantial or motivating factor for the custody defendants’ actions or  
12 omissions. See Capp v. Cnty. of San Diego, 940 F.3d 1046, 1055 (9th Cir. 2019) (“More  
13 problematic to plaintiffs’ [retaliation] claim is the Supreme Court’s admonition that an allegation  
14 is not plausible where there is an “obvious alternative explanation” for alleged misconduct.”)  
15 (citing Ashcroft v. Iqbal, 556 U.S. 662, 682 (2009) (quoting Bell Atl. Corp. v. Twombly, 550  
16 U.S. 544, 567 (2007))).

17 Although plaintiff disputes what took place on April 1 and 2, 2021, such disputes are not  
18 material because plaintiff cannot establish all retaliation elements. For example, it is undisputed  
19 that defendants’ actions in placing plaintiff in the holding cells were for plaintiff’s own protection  
20 and safety in light of his written threat to end his life. In addition, taking as true plaintiff’s claims  
21 that defendants Rowe and Medina applied the handcuffs extremely tight, that custody defendants  
22 denied plaintiff water and restroom breaks, and defendants Chamberlin and Arteaga refused to  
23 provide plaintiff medical care or document his injuries, plaintiff failed to adduce competent  
24 evidence to show that such actions or omissions were because of plaintiff’s conduct protected by  
25 the First Amendment. Finally, plaintiff failed to address the chilling effect, if any, he sustained as  
26 a result of such acts or omissions.

27 Overall, even when viewing the record in the light most favorable to plaintiff, a reasonable  
28 jury could not return a verdict for plaintiff on his retaliation claims because no defendant took

adverse action against plaintiff because of his protected conduct that chilled plaintiff's exercise of his First Amendment rights. Following submission of plaintiff's written threat to end his life, the custody defendants handcuffed plaintiff and put him in the holding cells to protect him from self-injurious acts. Such actions were for a legitimate penological purpose under the circumstances.

In conclusion, the Court recommends that defendants' motion for summary judgment on plaintiff's retaliation claims be granted.

## **VII. EIGHTH AMENDMENT MEDICAL CLAIMS**

Plaintiff alleges that on April 1 and 2, 2021, defendants Chamberlin and Arteaga failed to provide medical care and failed to document his pain and injuries following his release from the holding cells. SAC at 6. At all relevant times herein, both Chamberlin and Arteaga were Psychiatric Technicians. Pl.'s Opp'n at 26.

### **A. Legal Standards**

The Constitution requires prison officials to provide inmates with reasonably adequate medical care. See Estelle v. Gamble, 429 U.S. 97, 103 (1976). To hold an official liable for violating this duty under the Eighth Amendment, the inmate must satisfy two prongs, an objective prong and subjective prong. First, the inmate must suffer from a serious medical need (the objective prong); and second, the official must be deliberately indifferent to the inmate's serious medical need (the subjective prong). See Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled in part on other grounds, Peralta, 744 F.3d at 1082-83; Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012). A medical need is "serious" if the failure to treat "could result in further significant injury or the unnecessary and wanton infliction of pain." Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal citations omitted).

The "second prong—defendant's response to the need was deliberately indifferent—is satisfied by showing (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the indifference." Id. (internal citations omitted). This standard requires that the prison official must not only "be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists," but that person "must also draw the inference." Farmer, 511 U.S. at 837. This "subjective approach" focuses only "on what

1 a defendant’s mental attitude actually was (or is), rather than what it should have been (or should  
 2 be)...” Farmer, 511 U.S. at 839. Deliberate indifference is a higher standard than medical  
 3 negligence or malpractice, and a difference of opinion between medical professionals—or  
 4 between a physician and the prisoner—generally does not amount to deliberate indifference. See  
 5 Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004); Jackson v. McIntosh, 90 F.3d 330, 332  
 6 (9th Cir. 1996), overruled in part on other grounds by Peralta, 744 F.3d at 1076.

7 Neither will an “inadvertent failure to provide medical care” sustain a claim. See Estelle,  
 8 429 U.S. at 105. Misdiagnosis alone is not a basis for a claim, see Wilhelm, 680 F.3d at 1123,  
 9 and a “mere delay” in treatment, “without more, is insufficient to state a claim of deliberate  
 10 medical indifference,” Shapley v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th  
 11 Cir. 1985). Instead, a prisoner must show that a delay “would cause significant harm and that  
 12 defendants should have known this to be the case.” Hallett v. Morgan, 296 F.3d 732, 746 (9th  
 13 Cir. 2002).

#### 14 B. Discussion

15 The Court finds that plaintiff failed to demonstrate he suffered an objectively serious  
 16 medical need at the time he presented to either defendant Chamberlin or Arteaga on April 1 or 2,  
 17 2021, respectively.<sup>6</sup> Plaintiff claims he suffered “bruises, swollen wrists, and pain to his back,  
 18 shoulders, knees, neck and feet.” SAC at 6-7. Viewing the evidence in the light most favorable  
 19 to plaintiff, such injuries resulted from plaintiff standing for four hours each day, and from being  
 20 tightly handcuffed with no water or restroom breaks (contrary to the holding cell logs which state  
 21 otherwise, and which plaintiff declares were fabricated). But plaintiff provided no medical  
 22 evidence demonstrating that the injuries he sustained on April 1 or April 2, 2021, were  
 23 sufficiently serious to meet the objective prong. See Jett, 439 F.3d at 1096. In other words,  
 24 plaintiff adduced no medical evidence showing that the alleged failure to treat such injuries  
 25 “could result in further significant injury or the unnecessary and wanton infliction of pain.” Id.  
 26

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27 <sup>6</sup> Defendants dispute that defendant Arteaga was the individual plaintiff spoke with on April 2,  
 28 2021, but for purposes of this motion alone, stipulate that it was defendant Arteaga. Defs.’  
 Separate Statement of Uncontroverted Facts at 8 n.3 (ECF No. 66-2).

1 Indeed, when asked what treatments he would have liked such defendants to provide, plaintiff  
2 testified that if they had logged his injuries he “could have got treatment from [his] doctors.”  
3 Pl.’s Dep. II at 49:24. But plaintiff failed to identify what treatment he required, and provided no  
4 medical evidence to support his claimed need for treatment. Pl.’s Opp’n, passim. Rather,  
5 plaintiff provided two medical records documenting plaintiff received medical assessments on  
6 both April 1, 2021 and April 2, 2021, and both reflect “no actual or suspected pain” by nonparty  
7 RN Roderick Omari. Pl.’s Opp’n, Ex. M at 77-78. On the dates of the incidents, the records  
8 show plaintiff weighed in at 202 and 198 pounds, and his blood pressure readings were 134/96  
9 and 135/87, respectively. Plaintiff argues that these forms do not indicate that RN Omari asked  
10 plaintiff what his injuries were. Pl.’s Opp’n at 16. But such argument does not rebut what the  
11 records say, and his own declaration fails to address this issue. Pl.’s Opp’n at 124-25.

12 Plaintiff also provided declarations from two inmates who witnessed plaintiff contacting  
13 medical staff back at plaintiff’s housing unit. Pl.’s Opp’n, Exs. G, H at 60, 62. Inmate Ayala  
14 only identified “medical staff,” not defendants Chamberlin or Arteaga. Id., Ex. G at 60. Inmate  
15 Booth declared he witnessed plaintiff ask both Chamberlin and Arteaga to give him medical  
16 treatment and to document his injuries. Id., Ex. H at 62. Booth also declared that plaintiff was  
17 “very agitated pacing back and forward by the medication window.” Id. But neither inmate  
18 Ayala nor inmate Booth indicated they saw injuries other than swollen and bruised wrists and red  
19 marks. Id., Exs. G, H at 60, 62. Such observations comport with plaintiff’s identified claims of  
20 physical injuries sustained as a result of the tight handcuffing. Based on this evidence, the Court  
21 finds that plaintiff failed to demonstrate his injuries were objectively sufficiently serious to rise to  
22 the level of an Eighth Amendment violation in the deliberate indifference medical context. See  
23 Jett, 439 F.3d at 1096.

24 But even assuming plaintiff’s injuries were considered to be sufficiently serious to meet  
25 the objective prong, plaintiff failed to adduce evidence that either defendant Chamberlin or  
26 defendant Arteaga acted with a sufficiently culpable state of mind, failing to establish the

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1 subjective prong of Jett.<sup>7</sup> Plaintiff adduced no evidence demonstrating that either defendant  
2 Chamberlin or defendant Arteaga were aware of facts from which they could draw an inference  
3 that plaintiff was at a substantial risk of serious harm if they denied him medical care, or that  
4 either of those two defendants drew such an inference. Plaintiff does not allege that either  
5 defendant tended to him while he was in the holding cell; indeed, these defendants staffed the  
6 medical office back in plaintiff's housing unit. See, e.g., Pl.'s Dep. II at 14:2-10, 15:3-9.  
7 Plaintiff adduced no evidence demonstrating that either of these two defendants were aware how  
8 long plaintiff had been held in the holding cell each day. The Court notes that it is also  
9 undisputed that when plaintiff was taken to "regular medical" following his release from the  
10 holding cell, the medical staff weighed plaintiff and took his vitals, but then released him back to  
11 his housing unit. Pl.'s Dep. I at 64:13-17. Thus, it appears that medical staff in "regular medical"  
12 also did not subjectively believe plaintiff's medical needs required further medical care. Plaintiff  
13 relies on Owens v. Blagojevich, 2007 WL 61863, at \*3-4 (S.D. Ill. Jan. 8, 2007), arguing that  
14 where defendants knew of plaintiff's medical needs yet refused to report and document injuries or  
15 provide medical care, there is a genuine issue of material fact precluding summary judgment.  
16 Pl.'s Opp'n at 26-27. However, Owens is distinguishable because in Owens, the plaintiff alleged  
17 that during his hunger strike, he was left without medical care for 21 days and then later for 28  
18 days. Id. at \*4. Here, the evidence shows plaintiff had been on a hunger strike for two days:  
19 April 1 and 2, 2021. While plaintiff may not have received medical care from defendants  
20 Chamberlin and Arteaga, it is undisputed that plaintiff was seen in "regular medical" where he  
21 was weighed and had his vitals taken. Pl.'s Dep. I at 64:13-17. Plaintiff testified that he did not  
22 tell "regular medical" staff about his injuries because there were three correctional officers there  
23 and "those nurses are not going to go against the [correctional officers]." Pl.'s Dep. I at 65:14-  
24 18.

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26 <sup>7</sup> Plaintiff also contends that defendants Chamberlin and Arteaga have a significant history of  
27 misconduct that includes refusals to provide treatment and to document prisoners' illnesses and  
28 injuries. Pl.'s Opp'n at 14, Ex. J at 68-70. However, the evidence refers to two grievances, only  
referring to defendant Chamberlin, and, even if true, do not constitute a "significant history of  
misconduct," but in any event are inadmissible character evidence.

1 Viewing the record in the light most favorable to plaintiff, a reasonable jury could not  
2 return a verdict for plaintiff on this Eighth Amendment medical claim because he failed to adduce  
3 competent evidence that he presented with a sufficiently serious medical need that required  
4 medical care or that the failure to provide such medical care would result in further significant  
5 injury or chronic pain, and because he did not demonstrate that either defendant Chamberlin or  
6 defendant Arteaga was deliberately indifferent to plaintiff's serious medical needs.

7 For the above reasons, the Court recommends that defendants Chamberlin and Arteaga be  
8 granted summary judgment on plaintiff's Eighth Amendment medical claims.

9 C. Failure to Document Plaintiff's Injuries

10 Plaintiff brought a separate claim against defendants Chamberlin and Arteaga alleging  
11 deliberate indifference to plaintiff's serious medical needs alleging that these defendants failed to  
12 document the injuries he received as a result of the overly tight handcuffing.

13 However, as argued by defendants, plaintiff has no constitutional right to have his injuries  
14 documented. The Constitution requires prison officials to provide inmates with reasonably  
15 adequate medical care and treatment. See Estelle, 429 U.S. at 103. Plaintiff cites no legal  
16 authority for his theory that he has a constitutional right to have his injuries documented, and this  
17 Court found none. To the extent any defendant failed to document plaintiff's injuries, such  
18 failure would at most constitute a violation of prison regulations or policy. As discussed above,  
19 such violations do not demonstrate a federal civil rights violation. See Nurre, 580 F.3d at 1092  
20 (section 1983 claims must be premised on violation of federal constitutional right). Thus,  
21 plaintiff's claim that defendants Chamberlin and Arteaga failed to document his physical injuries  
22 fails as a matter of law. See id.

23 Defendants Chamberlin and Arteaga are entitled to summary judgment on plaintiff's claim  
24 that his Eighth Amendment rights were violated by their alleged failure to document his injuries.

25 **VIII. CONSPIRACY CLAIMS**

26 Plaintiff claims that the custody defendants engaged in a conspiracy to maliciously and  
27 sadistically handcuff plaintiff and put him in a holding cell for four hours without water or  
28 restroom breaks, fabricated the holding cell logs, and defendants Chamberlin and Arteaga joined

1 the conspiracy when they refused to provide plaintiff medical care and to document his injuries.  
2 SAC at 14-16.

3 A. Legal Standards

4 Conspiracy allegations must be more than mere conclusory statements. Bonnette v. Dick,  
5 2020 WL 3412733, at \*4 (E.D. Cal. June 22, 2020) (citing Mosher v. Saalfeld, 589 F.2d 438, 441  
6 (9th Cir. 1979)). A conspiracy claim brought under section 1983 requires proof of an agreement  
7 or meeting of the minds to violate constitutional rights. Avalos v. Baca, 596 F.3d 583, 592 (9th  
8 Cir. 2010); Mendocino Envtl. Ctr. v. Mendocino Cnty., 192 F.3d 1283, 1301 (9th Cir. 1999). It  
9 also requires proof of an actual deprivation of constitutional rights. Hart v. Parks, 450 F.3d 1059,  
10 1071 (9th Cir. 2006) (quoting Woodrum v. Woodward Cnty., Okla., 866 F.2d 1121, 1126 (9th  
11 Cir. 1989)). “To be liable, each participant in the conspiracy need not know the exact details of  
12 the plan, but each participant must at least share the common objective of the conspiracy.”  
13 Franklin v. Fox, 312 F.3d 423, 441 (9th Cir. 2001) (internal quotation marks and citation  
14 omitted), overruled in part on other grounds, Pearson v. Callahan, 555 U.S. 223, 236 (2009)

15 B. Discussion

16 As set forth above, it is undisputed that plaintiff was escorted to, and retained in the  
17 holding cells, for a legitimate penological purpose—to protect plaintiff from self-harm after he  
18 threatened to end his life until he could be evaluated by a mental health clinician. Other than  
19 reciting his conclusory version of the incidents, and the inferences he claims can be raised,  
20 plaintiff adduced no competent evidence that defendants Chamberlin and Arteaga engaged in a  
21 conspiracy with the custody defendants to intentionally refuse to document plaintiff’s injuries or  
22 provide him medical care following his release from the holding cells. Indeed, in his deposition,  
23 plaintiff testified their refusal to do so was based on a “code,” that “medical don’t get involved  
24 with custody’s issues.” Pl.’s Dep. II at 52:2-11. Such speculation is insufficient to demonstrate a  
25 meeting of the minds among defendants Chamberlin and Arteaga and the custody defendants.  
26 Defendants Chamberlin and Arteaga are entitled to summary judgment on plaintiff’s conspiracy  
27 claims.

28 As to plaintiff’s claim that the custody defendants engaged in a conspiracy to commit

1 harm by applying the handcuffs extremely tight to cause plaintiff pain while he was securely held  
2 in the holding cells, and then refused to loosen them despite his multiple requests and his advising  
3 them of his pre-existing physical injuries, there are genuine disputes of material fact that preclude  
4 granting summary judgment on such conspiracy claims. Viewing the evidence in the light most  
5 favorable to plaintiff, a reasonable jury could find that while the custody defendants were in the  
6 office adjacent to the holding cell, ignoring plaintiff's pleas for help and laughing and mocking  
7 plaintiff, their failure to loosen the handcuffs while plaintiff was securely held in the holding cells  
8 constituted a conspiracy to harm or inflict pain on plaintiff. See Gilbrook v. City of Westminster,  
9 177 F.3d 839, 856 (9th Cir. 1999). The custody defendants' knowledge of and participation in  
10 this conspiracy can be inferred from the circumstantial evidence, i.e., that they were involved in  
11 the overly tight application of handcuffs, and from the undisputed evidence that plaintiff  
12 requested the handcuffs be loosened on multiple occasions, notified the custody defendants of his  
13 pre-existing injuries, yet defendants ignored plaintiff's requests, remaining in the office while  
14 laughing and mocking plaintiff. See id. at 856-57. Thus, the custody defendants are not entitled  
15 to summary judgment on plaintiff's conspiracy claims in connection with the Eighth Amendment  
16 excessive force claim for overly tight handcuffing.

17 On the other hand, conspiracy is not itself a constitutional tort under 42 U.S.C. § 1983.  
18 Lacey v. Maricopa Cnty., 693 F.3d 896, 935 (9th Cir. 2012) (en banc). Therefore, to the extent  
19 that plaintiff intended his conspiracy claims to encompass his other claims against the custody  
20 defendants, the Court found there was no genuine dispute of material fact as to whether plaintiff  
21 sustained constitutional violations as to these claims against the custody defendants: (1) the  
22 Eighth Amendment excessive force claims against the custody defendants based on plaintiff's  
23 placement in the holding cells, (2) the Eighth Amendment conditions of confinement in the  
24 holding cells claims, and (3) the First Amendment retaliation claims. Based on these three  
25 claims, plaintiff failed to demonstrate "any actual deprivation of his constitutional rights resulted  
26 from the alleged conspiracy." Woodrum, 866 F.2d at 1126. Thus, the custody defendants are  
27 entitled to summary judgment on plaintiff's conspiracy claims based on these three claims.

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## IX. QUALIFIED IMMUNITY

Defendants argue they are entitled to qualified immunity as to all of plaintiff's claims because their conduct did not violate plaintiff's constitutional rights, and it was not clearly established that a reasonable correctional officer or psychiatric technician would believe that such conduct was unconstitutional. Defs.' Mem. at 22-23.

### A. Legal Standards

"The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" Pearson, 555 U.S. at 231 (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). Qualified immunity shields an officer from liability even if his or her action resulted from "'a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact.'" Id. (quoting Groh v. Ramirez, 540 U.S. 551, 567 (2004)).

"Determining whether officials are owed qualified immunity involves two inquiries: (1) whether, taken in the light most favorable to the party asserting the injury, the facts alleged show the official's conduct violated a constitutional right; and (2) if so, whether the right was clearly established in light of the specific context of the case." Robinson v. York, 566 F.3d 817, 821 (9th Cir. 2009) (citing Saucier v. Katz, 533 U.S. 194, 201 (2001), receded from, Pearson, 555 U.S. at 236 (the two factors set out in Saucier need not be considered in sequence.)). A right is "clearly established" when, "at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right." Ashcroft v. al-Kidd, 563 U.S. 731, 741 (2011) (quoting Anderson v. Creighton, 483 U.S. 635, 640 (1987)).

The qualified immunity analysis is separate from the Eighth Amendment excessive force analysis. See Marquez v. Gutierrez, 322 F.3d 689, 691 (9th Cir. 2003). Thus, a correctional officer can do an act which would violate a prisoner's Eighth Amendment right but still be entitled to qualified immunity if a reasonable officer in his position would have believed that his response was a good faith effort to restore discipline. Id. at 692-93; Estate of Ford v. Ramirez-

1 Palmer, 301 F.3d 1043, 1053 (9th Cir. 2002) (the existence of triable issues of fact as to whether  
2 prison officials were deliberately indifferent does not necessarily preclude qualified immunity.).  
3 Courts must be “hesitant ‘to critique in hindsight decisions necessarily made in haste, under  
4 pressure, and frequently without the luxury of a second chance.’” Marquez, 322 F.3d at 692  
5 (quoting Whitley, 475 U.S. at 320).

6 B. Discussion

7 Defendants move for qualified immunity on the grounds that their conduct did not violate  
8 plaintiff’s First and Eighth Amendment rights and because it would not have been clear to a  
9 reasonable official in defendants’ positions that their treatment of plaintiff violated clearly  
10 established law. However, as discussed above, defendants failed to address the issue of overly  
11 tight handcuffs and their responses thereto. “It is well settled that overly tight handcuffing can  
12 constitute excessive force.” Wall v. Cnty. of Orange, 364 F.3d 1107, 1112 (9th Cir. 2004).  
13 Therefore, the Court finds that the custody defendants failed to establish they are entitled to  
14 qualified immunity as to plaintiff’s Eighth Amendment excessive force claim for overly tight  
15 handcuffing, including his claim that the custody defendants conspired to handcuff plaintiff  
16 extremely tight and refused to loosen the handcuffs to inflict pain or harm, where plaintiff was  
17 securely held in the holding cells. Taking as true plaintiff’s allegations concerning the overly  
18 tight handcuffing, as well as his declaration as to the custody defendants’ responses, a reasonable  
19 correctional officer would know that the failure to loosen overly tight handcuffs on a prisoner  
20 securely held in a holding cell would be unconstitutional.

21 The Court found no genuine dispute of material fact remained to demonstrate a  
22 constitutional violation for the following claims: (1) the Eighth Amendment excessive force  
23 claims against the custody defendants based on plaintiff’s placement in the holding cells; (2) the  
24 Eighth Amendment claims challenging the conditions of confinement in the holding cells; (3) the  
25 First Amendment retaliation claims; (4) the Eighth Amendment medical claims as to defendants  
26 Chamberlin and Arteaga; and (5) the conspiracy claims based on claims (1) through (4) as to all  
27 defendants. Accordingly, as to these claims, “there is no necessity for further inquiries  
28 concerning qualified immunity.” Los Angeles Cnty. v. Rettele, 550 U.S. 609, 616 (2007)

(internal quotation marks and citation omitted). Therefore, the Court declines to address the issue of qualified immunity as to these five claims.

### **X. DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S SUR-REPLY**

Following the filing of defendants' reply to plaintiff's summary judgment opposition, on June 14, 2024 plaintiff filed a pleading titled "Notice of Motion and Plaintiff's Reply in Support of Opposition Motion for Defendants Summary Judgment." (ECF No. 77.) On June 24, 2024, defendants filed a motion to strike plaintiff's pleading filed June 14, 2024 as an impermissible sur-reply. (ECF No. 78.) On July 3, 2024, plaintiff filed an opposition to defendants' motion to strike. (ECF No. 79.) Defendants did not file a reply to the opposition.

The Local Rules provide for a motion, an opposition, and a reply. See E.D. Cal. L.R. 230(l). There is nothing in the Local Rules or the Federal Rules that provides the right to file a sur-reply. Though district courts have the discretion to either permit or preclude a sur-reply, see JG v. Douglas Cnty. School Dist., 552 F.3d 786, 803 n.14 (9th Cir. 2008) (district court did not abuse discretion in denying leave to file a sur-reply where it did not consider new evidence in reply), the court generally views motions for leave to file a sur-reply with disfavor. See Hill v. England, 2005 WL 3031136, at \*1 (E.D. Cal. Nov. 8, 2005) (citation omitted).

Plaintiff did not seek leave to file a sur-reply prior to filing the sur-reply.<sup>8</sup> In addition, in his opposition to the motion to strike, plaintiff failed to demonstrate good cause why he should be granted leave to file a sur-reply. Plaintiff primarily relies on his pro se status, and argues that his pleadings should be construed liberally and held to less stringent standards. (ECF No. 79 at 1.) "Although the Court must construe the pleadings liberally, pro se litigants must follow the same rules of procedure that govern other litigants." Hernandez v. Nye Cnty. Sch. Dist., 2011 WL 2938274, at \*1 (D. Nev. July 19, 2011) (internal quotation marks and citation omitted). This Court finds no good cause to permit plaintiff to file the sur-reply. In addition, permitting plaintiff to file the sur-reply would require granting defendants leave to respond to the sur-reply, further delaying resolution of defendants' summary judgment motion. For these reasons, defendants'

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<sup>8</sup> Plaintiff's sur-reply consists of legal argument, citations to exhibits already filed and considered, and contains no new evidence. (ECF No. 77.)

1 motion to strike plaintiff's sur-reply is granted.

2 **XI. CONCLUSION**

3 In summary, as set forth above, the Court recommends that this action proceed solely as to  
4 (1) plaintiff's Eighth Amendment excessive force claim for overly tight handcuffing against the  
5 custody defendants McTaggart, Quiring, Rowe and Medina, and (2) plaintiff's related conspiracy  
6 claim as to handcuffing against the custody defendants McTaggart, Quiring, Rowe and Medina.  
7 The Court recommends granting summary judgment for defendants on all other claims. As a  
8 result, no claims remain against defendants Chamberlin and Arteaga.

9 Accordingly, IT IS HEREBY ORDERED that defendants' motion to strike plaintiff's  
10 unauthorized surreply (ECF No. 78) is granted.

11 Further, IT IS RECOMMENDED that defendants' motion for summary judgment (ECF  
12 No. 66) be granted in part and denied in part, as follows:

13 1. Custody defendants McTaggart, Quiring, Rowe and Medina be granted summary  
14 judgment on plaintiff's Eighth Amendment excessive force claims based on plaintiff's placement  
15 in the holding cells on April 1 and 2, 2021; plaintiff's Eighth Amendment claims challenging the  
16 conditions of confinement in the holding cells; and plaintiff's First Amendment retaliation claims;

17 2. Defendants Chamberlin and Arteaga be granted summary judgment on plaintiff's  
18 Eighth Amendment medical claims;

19 3. All defendants be granted summary judgment on plaintiff's conspiracy claims based on  
20 plaintiff's alleged constitutional violations as to his placement in the holding cells on April 1 and  
21 2, 2021, the conditions of confinement in the holding cells, and retaliation (set forth in paragraphs  
22 1 and 2 above); and

23 4. Custody defendants McTaggart, Quiring, Rowe and Medina be denied summary  
24 judgment on plaintiff's Eighth Amendment excessive force claim for overly tight handcuffing and  
25 the related conspiracy claim as to handcuffing.

26 These findings and recommendations are submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
28 after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned  
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
3 objections shall be filed and served within fourteen days after service of the objections. The  
4 parties are advised that failure to file objections within the specified time may waive the right to  
5 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6  
7 Dated: February 18, 2025

8   
9 CHI SOO KIM  
10 UNITED STATES MAGISTRATE JUDGE

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